

MM Docket Nos. 94-150, 92-51, and 87-154; FCC 95-139, adopted April 3, 1995, and released April 7, 1995. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Order

1. The Commission denies the Motion to Establish an Accelerated Procedural Schedule for the LLC Issue ("Motion"), which the Association of Black Owned Television Stations ("ABOTS") filed in this proceeding on January 25, 1995. The Commission, in a Notice of Proposed Rule Making (60 FR 6483, February 2, 1995) established a comment deadline of April 17, 1995, and of May 17, 1995 for reply comments. ABOTS asked that the Commission accelerate the comment schedule with respect to Section VII (Limited Liability Companies and Other New Business Forms) of the Notice of Proposed Rule Making with comments due by February 10, 1995, and reply comments due by February 17, 1995. ABOTS also asked the Commission to expedite our disposition in the rule making regarding the issue of LLCs and to reach a decision by March 3, 1995, if possible. The Commission finds the concerns expressed by ABOTS in its Motion to be unfounded, and believes that an acceleration of the comment period and decisionmaking process would not be in the public interest. Thus, the Commission denies ABOTS' requests. In a separate decision adopted April 7, 1995, and printed elsewhere in this **Federal Register**, the Commission extends the time for filing comments in this proceeding to May 17, 1995, and the time for filing replay comments to June 19, 1995.

2. Accordingly, pursuant to Section 4(j) of the Communications Act, 47 U.S.C. 154(j) It Is Hereby Ordered that the Motion to Establish an Accelerated Procedural Schedule for the LLC Issue filed by the Association of Black Owned Television Stations is denied.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-9570 Filed 4-18-95; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 95-40; FCC 95-145]

Broadcast Services; Network/Affiliate rule

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rule Making proposes to eliminate or modify the Commission's requirement that broadcast television stations file their network affiliation agreements with the Commission and that these filings be publicly available. This action is needed to determine if the costs of this rule exceed its benefits.

DATES: Comments are due by June 12, 1995, and reply comments are due by July 12, 1995.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Kieschnick (202-739-0770) or Paul Gordon (202-776-1653), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making in MM Docket No. 95-40, FCC 95-145, adopted April 5, 1995 and released April 5, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. With this Notice of Proposed Rule Making (NPRM), the Commission continues its examination of rules regulating broadcast television network/affiliate relations in light of changes in the video marketplace. This NPRM proposes repeal or modification of 47 C.F.R. § 73.3613(a) (the "filing of affiliation contracts" rule). This rule requires television broadcast licensees to file copies of network affiliation contracts, agreements, and understandings with the Commission. The contract must be reduced to one written document, including the substance of any oral agreements, without reference to any other document. However, the rule does allow subsequent renewals, changes, or amendments to the contract to be set forth in separate filings that refer to the original contract. Notification of

cancellation or termination of the filed contracts is also required. This rule applies only to agreements with broadcast television networks that offer 15 or more hours of programming per week to 25 or more affiliates in 10 or more states. Thus, while ABC, CBS, NBC, and Fox are subject to the rule, the United Paramount Network and the Warner Brothers Network are not.

2. The primary purpose of requiring broadcast television stations to file their affiliation agreements with the Commission has been to give the Commission the ability to monitor these contractual relationships and ensure that the Commission's restrictions on these relationships are not violated in affiliation agreements. Also, by requiring affiliates to file their affiliation agreements with the Commission, the rule may chill any desire to engage in misbehavior, thereby reducing the likelihood that these agreements will contain provisions that violate the Commission's underlying network/affiliate rules.

3. Since 1985, when we last examined this rule, the video marketplace has changed dramatically. As pointed out in our recent Further Notice of Proposed Rule Making in MM Docket No. 91-221 (60 FR 6490, February 2, 1995) addressing broadcast television ownership, there has been an increase in the number of broadcast stations available for affiliation with a broadcast network in nearly every market. Moreover, new, aspiring networks have emerged.¹ As a result of these changes, the bargaining positions of broadcast television networks and commercial broadcast television stations have changed and differ market by market. The recent affiliate switches demonstrate the increased competition between broadcast networks for affiliation with broadcast television stations in different markets, and thus suggest that broadcast networks' market power over their affiliates has diminished to some extent.

4. Given the recent increased competition between broadcast networks for affiliates in different markets, we solicit comment on whether or not there is a continuing need for the Commission to monitor network/affiliate relationships through mandatory filings of their affiliation agreements. We also seek comment on the extent to which filing these contracts with the Commission is necessary to deter violations of the

¹ Fox now competes with ABC, CBS, and NBC. Further, United Paramount Network and Warner Brothers Network are beginning to develop as competitors to these networks.

network/affiliate rules. If we conclude that routine filing of agreements is not necessary to deter violations of the rules, we could relieve licensees of the duty to file affiliation agreements routinely, and instead simply require the production of such agreements upon Commission request.

5. Separate and apart from the issue of whether contracts should be filed with the Commission is the issue of whether licensees should be required to make these contracts available to the public. Making these agreements publicly available allows the general public to inspect them and to file complaints where abuses of the public interest are discovered. It also allows third parties (e.g., advertisers), whose commercial interests are affected by these agreements, to determine if their interests are harmed by these agreements. We solicit comment on the importance of these purposes and examples of the general public's use of these filings that illustrate the extent of the benefits from making these filings publicly available.

6. Turning to the possible costs of the rule, we note that there are direct and indirect costs to be considered. The direct costs of filing these agreements are the additional expenses incurred to prepare and submit the filings to the Commission over the expenses incurred to prepare affiliation agreements for their original purpose. We solicit evidence on the size of these costs incurred by filing affiliates.

7. The indirect costs of filing these agreements are more difficult to quantify, potentially more serious, and a result of our requirement that the filings be publicly available. First, networks must bargain with broadcast stations serving different markets to gain access to their potential audiences through affiliation agreements. As mentioned earlier, the number of potential parties to such contracts differs market by market, but generally represents a few potential parties on either side. By making compensation or other data in these filings publicly available, the Commission may facilitate the ability of parties either seeking or offering affiliation to avoid competition. For example, in markets where there are more commercial stations than broadcast networks interested in seeking affiliation agreements, networks might seek, through parallel action, to lower the compensation they pay potential affiliates and could use the public filings to ensure each party is performing as agreed.² Alternatively, in

markets where there are more broadcast networks seeking affiliation agreements than commercial broadcast stations available, commercial stations could seek to ensure that the compensation that each of them receives is higher than the compensation any one of them alone was willing to accept. In either example, the public availability of the affiliation compensation data facilitates joint monitoring to ensure similar behavior.³ The Commission solicits comment on the potential for such behavior in light of current market conditions, estimates of the size of these indirect costs, and their consequences, if any, for viewers.

8. Second, making these filings publicly available alters the dynamic of the contracting process. For example, the requirement reduces a network's ability and willingness to craft contractual arrangements with one affiliate to recognize special market conditions of that affiliate. By way of illustration, a network may discern that a new affiliate requires improved local news coverage in order to compete against other television stations in its market and may wish to help fund such improvement because of the financial constraints that the new affiliate faces. However, the network may be reluctant to do so if its other affiliates can discover such improved or different terms and are likely to demand similar terms. Thus, by requiring contracts to be publicly available, our rules make it less likely that the terms are tailored to best suit the needs of the parties to the contract. Confidentiality of the financial terms of affiliates' contracts would break the linkage between concessions offered to one affiliate and negotiations with other affiliates. Networks would be able to tailor affiliation contracts solely to local conditions with less concern for repercussions in other markets. On the other hand, as the Commission previously concluded, public filing of these contracts enables weaker affiliates to attempt to ensure that they receive comparable or competitive compensation to other affiliates of a network, thereby strengthening their overall financial condition and ability to

serve the public. Consequently, we solicit comments on the advantages and disadvantages of a network's being able to tailor its contracts versus affiliates' desire to ensure comparable contracts, particularly in terms of the Commission's competition and diversity concerns.

9. We propose to eliminate the filing requirement and require broadcast television stations to make their affiliation agreements available to the Commission upon request. We will adopt this proposal if we conclude that the benefits of continuous monitoring of broadcast television station's affiliation agreements with broadcast television networks no longer exceed their costs. We tentatively conclude that we can continue to enforce our network/affiliate rules through a system of complaint initiated requests for affiliation contract information. Such a system would relieve licensees of the paperwork burden of filing contracts with the Commission, and would reduce the potential anticompetitive effects of general public disclosure. We solicit comment on this tentative conclusion and on whether we can rely on affiliates, or members of the public, to file such complaints.

10. Alternatively, we could continue to require contracts to be filed with the Commission, but maintain the confidentiality of the contracts by limiting access to authorized FCC employees. This modification of our rule would allow us to continue to monitor network/affiliate relations to protect the public interest, while at the same time reducing the indirect costs of the current filing requirement which arise from the public availability of these agreements. However, the Freedom of Information Act requires agencies to disclose documents in certain circumstances. Given that we did not exempt these filings from the Freedom of Information Act in our 1969 *Report and Order* in Docket No. 14710 (34 FR 5947, May 1, 1969), we also solicit comment on whether or not this proposal is a viable option.

11. Another alternative would be to continue the filing requirement but modify it to require that only redacted copies of contracts be made available to the public. These copies would omit any references to the values which determine the affiliate compensation and, possibly, other business sensitive terms. In this way, the public could continue to monitor the issues affecting program diversity in their community and we could continue to monitor the network-affiliate relationship. This option would preserve the benefit of general public scrutiny of these

166-172 for a discussion of influences on the bargaining position of broadcast television networks and commercial broadcast television stations in negotiating affiliation agreements.

³ For a general overview of the manner in which data dissemination among competitors may facilitate cartel-like behavior, see N.R. Prance, *Price Data Dissemination as a Per Se Violation of the Sherman Act*, 45 U. Pitt. L. Rev. (1983) at 68-78; see also Donald S. Clark, *Price-Fixing without Collusion: An Antitrust Analysis of Facilitating Practices after Ethyl Corp.*, 1983 Wis. L. Rev. 887, 900-901; see also *MCI Telecom. Corp. v. AT&T*, 114 S. Ct. 2223, 2233 (1994) for an example of the Commission's concern over this issue.

² See B. M. Owen and S. S. Wildman, *Video Economics*, Harvard University Press, (1992) at

agreements, but reduce their potential negative effects on the competition for affiliations.

12. We could, of course, also maintain the rule as it currently stands. We would adopt this option only if we determine that the direct and indirect costs associated with these filings continue to be less than their benefits. We request that comments on the above proposals weigh the benefits and costs in a manner which justifies the particular recommendation a commenter makes.

Administrative Matters

13. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before June 12, 1995, and reply comments on or before July 12, 1995. To file formally in this proceeding, you must file an original plus five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

14. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Act Statement

15. *Reason for the Action:* This proceeding was initiated to review and update the Commission's rule concerning the filing of broadcast television network affiliation contracts.

16. *Objective of this Action:* The actions proposed in this Notice are intended to reduce concerns over the potential deleterious effects of making some or all the substance of broadcast television affiliation agreements publicly available.

17. *Legal Basis:* Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 and 303.

18. *Recording, Recordkeeping, and Other Compliance Requirements*

Inherent in the Proposed Rule: The proposals may reduce existing requirements.

19. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:* None.

20. *Description, Potential Impact, and Number of Small Entities Involved:* Approximately 1,500 existing television broadcasters of all sizes may be affected by the proposals contained in this decision.

21. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the State Objectives:* The proposals contained in this NPRM are intended to simplify and ease the regulatory burden currently placed on commercial television broadcasters.

22. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the above Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

23. This Notice of Proposed Rule Making is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-9569 Filed 4-18-95; 8:45 am]

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47 CFR Part 73

[MM Docket Nos. 91-221 and 87-8; 94-149 and 91-140; and 94-150, 92-51 and 87-154; DA 95-761]

Mass Media Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Commission extends by 30 days the comment periods for three interrelated proceedings in order to afford commenters more time to collect data and perform necessary statistical analyses. The three proceedings involve (1) the television multiple ownership rules, (2) incentives to increase minority and female ownership of mass media facilities and (3) the Commission's rules regarding attribution of ownership interests. In all three proceedings, the Commission requested detailed analyses demonstrating the relative benefits and detriments of current and proposed rules.

DATES: Comments due May 17, 1995; reply comments due June 19, 1995.

ADDRESSES: Federal Communication Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 776-1653.

SUPPLEMENTARY INFORMATION:

Order Granting Extension of Time for Filing Comments and Reply Comments

Adopted: April 7, 1995;

Released: April 7, 1995.

By the Acting Chief, Mass Media Bureau:

1. On December 15, 1994, the Commission adopted three related rulemaking items. First, the Commission adopted a Further Notice of Proposed Rule Making regarding ownership of television stations. Further Notice of Proposed Rule Making in MM Docket Nos. 91-221 and 87-8, FCC 94-322, 60 Fed. Reg. 6490 (Feb. 2, 1995) (TV Ownership Further Notice). Second, the Commission adopted a Notice of Proposed Rule Making seeking comment on initiatives designed to increase minority and female ownership of the mass media. Notice of Proposed Rule Making in MM Docket Nos. 94-149 and 91-140, FCC 94-323, 60 Fed. Reg. 6068 (Feb. 1, 1995) (Minority/Female Ownership Notice). Third, the Commission adopted a Notice of Proposed Rule Making exploring modification of the Commission's rules regarding attribution of ownership interests. Notice of Proposed Rule Making in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 94-324, 60 Fed. Reg. 6483 (Feb. 2, 1995) (Attribution Notice). Comments in all three proceedings are currently due on April 17, 1995, and reply comments are due on May 17, 1995.

2. The Commission has received a separate request for extension of the